

person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time.* In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be made longer than 10 working days when the Commission notifies the requester within the initial response time that the request cannot be processed in the specified time, and the requester is provided an opportunity to limit the scope of the request to allow processing within 20 working days; or to arrange with the Commission an alternative time frame.

(3) Two or more requests aggregated into a single request under § 388.109(b)(2)(vii) may qualify for an extension of time if the requests, as aggregated, otherwise satisfy the unusual circumstances specified in this section.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5455, Feb. 3, 1998]

#### § 388.111 Procedures in event of subpoena.

(a)(1) The procedures specified in this section will apply to all subpoenas directed to Commission employees that relate in any way to the employees' official duties. These procedures will also apply to subpoenas directed to former Commission employees if the subpoenas seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c) of this section will also apply to subpoenas directed to the Commission.

(2) For purposes of this section,

(i) *Employees*, except where otherwise specified, includes "special government employees" and other Commission employees; and

(ii) *Nonpublic* includes any material or information which is exempt from availability for public inspection and copying;

(iii) *Special government employees* includes consultants and other employees as defined by section 202 of Title 18 of the United States Code.

(iv) *Subpoena* means any compulsory process in a case or matter, including a case or matter to which the Commission is not a party;

(b) Any employee who is served with a subpoena must promptly advise the General Counsel of the Commission of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances. Any former employee who is served with a subpoena that concerns nonpublic information shall promptly advise the General Counsel of the Commission of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances.

(c) A party causing a subpoena to be issued to the Commission or any employee or former employee of the Commission must furnish a statement to the General Counsel of the Commission. This statement must set forth the party's interest in the case or matter, the relevance of the desired testimony or documents, and a discussion of whether the desired testimony or documents are reasonably available from other sources. If testimony is desired,

the statement must also contain a general summary of the testimony and a discussion of whether Commission records could be produced and used in lieu of testimony. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(d) Commission records or information which are not part of the public record will be produced only upon authorization by the Commission.

(e) The Commission or its designee will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's Rules of Practice and Procedure, and the public interest, taking into account factors such as applicable privileges including the deliberative process privilege; the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and records.

(f) The Commission authorizes the General Counsel or the General Counsel's designee to make determinations under this section.

**§ 388.112 Requests for special treatment of documents submitted to the Commission.**

(a) *Scope.* (1) Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure.

(2) Any person submitting documents containing critical energy infrastructure information (CEII) as defined in § 388.113 should follow the procedures specified in this section.

(b) *Procedures.* A person claiming that information warrants special treatment as CEII or privileged must file a statement requesting CEII or

privileged treatment for some or all of the information in a document, and the justification for special treatment of the information, in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov>.

(c) *Effect of privilege or CEII claim.* (1) For documents filed with the Commission:

(i) The Secretary of the Commission will place documents for which privileged or CEII treatment is sought in accordance with paragraph (b) of this section in a nonpublic file while the request for privileged or CEII treatment is pending. By placing the documents in a nonpublic file, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged or CEII treatment and a copy of the original document without the privileged or CEII information in a public file while the request is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d), (e), and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information or any other appropriate Commission official will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter,